

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MONICA JO JOHNSON,	)
	) No. CV-09-3047-JPH
Plaintiff,	)
	) ORDER GRANTING DEFENDANT'S
v.	) MOTION FOR SUMMARY JUDGMENT
	)
MICHAEL J. ASTRUE, Commissioner	)
of Social Security,	)
	)
Defendant.	)
	)
	)

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BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on October 8, 2010 (Ct. Rec. 13, 19). Attorney D. James Tree represents plaintiff; Special Assistant United States Attorney Stephanie Martz represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (Ct. Rec. 8). On April 28, 2010, plaintiff filed a reply (Ct. Rec. 21). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's motion for summary judgment (Ct. Rec. 19) and **DENIES** plaintiff's motion for summary judgment (Ct. Rec. 13).

**JURISDICTION**

Plaintiff protectively filed concurrent applications for supplemental security income (SSI) and disability insurance income (DIB) on March 22, 2006, alleging disability as of September 1, 2005, due to bipolar disorder, attention deficit disorder (ADD),

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1 anxiety, panic attacks, memory problems, suicide attempts,  
2 fatigue, and depression (Tr. 58-60, 85, 88, 95). Her applications  
3 were denied initially and on reconsideration (Tr. 30-31, 33-36).

4 Administrative Law Judge (ALJ) Paul Gaughen held a hearing  
5 November 5, 2008 (Tr. 205-223). On December 18, 2008, he issued an  
6 unfavorable decision (Tr. 11-20). On March 23, 2009, the Appeals  
7 Council denied review (Tr. 4-7). Therefore, the ALJ's decision  
8 became the final decision of the Commissioner, which is appealable  
9 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff  
10 filed this action for judicial review pursuant to 42 U.S.C. §  
11 405(g) on May 8, 2009 (Ct. Rec. 2,4).

12 **STATEMENT OF FACTS**

13 The facts have been presented in the administrative hearing  
14 transcripts, the ALJ's decision, the briefs of both parties, and  
15 are summarized here where necessary.

16 Ms. Johnson was 26 years old at onset and 29 at the hearing  
17 (Tr. 26, 58). She has a ninth or tenth grade education and has not  
18 earned her GED. Plaintiff has worked as a cashier and a  
19 housekeeper (Tr. 77-78, 89-90, 92, 96, 101, 208-210). Ms.  
20 Johnson's impairments limit her ability to work because she has  
21 "anger problems, can't wake up, not able to relate to others, poor  
22 concentration, memory problems, [and] can't follow directions"  
23 (Tr. 88). She stopped working because she could not get along with  
24 others (Tr. 89, 211, 214-215).

25 She lives with her boyfriend (Tr. 216). Ms. Johnson testified  
26 she watches television, reads, washes dishes and floors, does  
27 laundry, and cooks simple meals (Tr. 216-218). Plaintiff attends  
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1 church on Sundays for four hours, and sometimes attends during the  
2 week (Tr. 212, 218-219). She has no friends and only has contact  
3 with her boyfriend and family and church members (Tr. 212, 215).

4 Plaintiff feels guilty and worthless every day and has  
5 attempted suicide, most recently four months before the hearing  
6 when she tried to hang herself (Tr. 212-214). She is easily  
7 distracted (Tr. 213). Plaintiff has not used drugs or alcohol  
8 since 2004 or 2005 (Tr. 166, 220-222). She does not currently  
9 receive counseling because she is not receiving state disability  
10 benefits (Tr. 214).

#### 11 SEQUENTIAL EVALUATION PROCESS

12 The Social Security Act (the Act) defines disability as the  
13 "inability to engage in any substantial gainful activity by reason  
14 of any medically determinable physical or mental impairment which  
15 can be expected to result in death or which has lasted or can be  
16 expected to last for a continuous period of not less than twelve  
17 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also  
18 provides that a Plaintiff shall be determined to be under a  
19 disability only if any impairments are of such severity that a  
20 plaintiff is not only unable to do previous work but cannot,  
21 considering plaintiff's age, education and work experiences,  
22 engage in any other substantial gainful work which exists in the  
23 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus,  
24 the definition of disability consists of both medical and  
25 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
26 (9<sup>th</sup> Cir. 2001).

27 The Commissioner has established a five-step sequential  
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1 evaluation process for determining whether a person is disabled.  
2 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
3 is engaged in substantial gainful activities. If so, benefits are  
4 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,  
5 the decision maker proceeds to step two, which determines whether  
6 plaintiff has a medically severe impairment or combination of  
7 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

8 If plaintiff does not have a severe impairment or combination  
9 of impairments, the disability claim is denied. If the impairment  
10 is severe, the evaluation proceeds to the third step, which  
11 compares plaintiff's impairment with a number of listed  
12 impairments acknowledged by the Commissioner to be so severe as to  
13 preclude substantial gainful activity. 20 C.F.R. §§  
14 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
15 App. 1. If the impairment meets or equals one of the listed  
16 impairments, plaintiff is conclusively presumed to be disabled. If  
17 the impairment is not one conclusively presumed to be disabling,  
18 the evaluation proceeds to the fourth step, which determines  
19 whether the impairment prevents plaintiff from performing work  
20 which was performed in the past. If a plaintiff is able to perform  
21 previous work, that Plaintiff is deemed not disabled. 20 C.F.R. §§  
22 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's  
23 residual functional capacity (RFC) assessment is considered. If  
24 plaintiff cannot perform this work, the fifth and final step in  
25 the process determines whether plaintiff is able to perform other  
26 work in the national economy in view of plaintiff's residual  
27 functional capacity, age, education and past work experience. 20

1 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*,  
2 482 U.S. 137 (1987).

3 The initial burden of proof rests upon plaintiff to establish  
4 a *prima facie* case of entitlement to disability benefits.  
5 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
6 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
7 met once plaintiff establishes that a physical or mental  
8 impairment prevents the performance of previous work. The burden  
9 then shifts, at step five, to the Commissioner to show that (1)  
10 plaintiff can perform other substantial gainful activity and (2) a  
11 "significant number of jobs exist in the national economy" which  
12 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
13 Cir. 1984).

#### 14 STANDARD OF REVIEW

15 Congress has provided a limited scope of judicial review of a  
16 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
17 the Commissioner's decision, made through an ALJ, when the  
18 determination is not based on legal error and is supported by  
19 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
20 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
21 "The [Commissioner's] determination that a plaintiff is not  
22 disabled will be upheld if the findings of fact are supported by  
23 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
24 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is  
25 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
26 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
27 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);

1 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
2 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
3 evidence as a reasonable mind might accept as adequate to support  
4 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
5 (citations omitted). "[S]uch inferences and conclusions as the  
6 [Commissioner] may reasonably draw from the evidence" will also be  
7 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
8 review, the Court considers the record as a whole, not just the  
9 evidence supporting the decision of the Commissioner. *Weetman v.*  
10 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v.*  
11 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

12 It is the role of the trier of fact, not this Court, to  
13 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
14 evidence supports more than one rational interpretation, the Court  
15 may not substitute its judgment for that of the Commissioner.  
16 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
17 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
18 evidence will still be set aside if the proper legal standards  
19 were not applied in weighing the evidence and making the decision.  
20 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
21 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to  
22 support the administrative findings, or if there is conflicting  
23 evidence that will support a finding of either disability or  
24 nondisability, the finding of the Commissioner is conclusive.  
25 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 26 ALJ'S FINDINGS

27 At the outset the ALJ found plaintiff was insured for DIB  
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1 purposes through June 30, 2006 (Tr. 11, 13). At step one he found  
2 plaintiff did not engage in substantial gainful activity after  
3 onset on September 1, 2005 (Tr. 13). At steps two and three, ALJ  
4 Gaughen found plaintiff suffers from the medically determinable  
5 impairments of depression, history of attention deficit disorder,  
6 and substance abuse (DAA) in remission, but they are not severe  
7 (Tr. 13). He found plaintiff less than completely credible (Tr.  
8 15). Because the ALJ found plaintiff's impairments are not severe,  
9 she is not disabled as defined by the Social Security Act (Tr. 19-  
10 20).

#### 11 **ISSUES**

12 Plaintiff alleges the ALJ erred when he weighed the evidence  
13 of psychological and physical impairment, and when he assessed her  
14 credibility (Ct. Rec. 14 at 11-18). The Commissioner answers the  
15 Court should affirm the decision because it is supported by the  
16 evidence and free of error (Ct. Rec. 20 at 2, 5, 15).

#### 17 **DISCUSSION**

##### 18 **A. Step two**

19 Plaintiff alleges the ALJ should have found her mental  
20 impairments and resulting limitations severe at step two.

21 In social security proceedings, the claimant must prove the  
22 existence of a physical or mental impairment by providing medical  
23 evidence consisting of signs, symptoms, and laboratory findings;  
24 the claimant's own statement of symptoms alone will not suffice.  
25 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
26 on the basis of a medically determinable impairment which can be  
27 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
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1 medical evidence of an underlying impairment has been shown,  
2 medical findings are not required to support the alleged severity  
3 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cir.  
4 1991).

5 An impairment or combination of impairments may be found "not  
6 severe only if the evidence established a slight abnormality that  
7 has no more than a minimal effect on an individual's ability to  
8 work." *Webb v. Barnhart*, 433 F.3d 683, 686-687 (9<sup>th</sup> Cir.  
9 2005)(citing *Smolen v. Chater*, 433 F.3d 1273, 1290 (9<sup>th</sup> Cir.  
10 1996); see also *Yuckert v. Bowen*, 841 F.2d 303, 306 (9<sup>th</sup> Cir.  
11 1988). If an adjudicator is unable to determine clearly the effect  
12 of an impairment or combination of impairments on the individual's  
13 ability to do basic work activities, the sequential evaluation  
14 should not end with the not severe evaluation step. S.S.R. 85-28  
15 (1985). Step two, then, is "a de minimus screening device [used]  
16 to dispose of groundless claims," *Smolen*, 80 F.3d at 1290, and an  
17 ALJ may find that a claimant lacks a medically severe impairment  
18 or combination of impairments only when his conclusion is "clearly  
19 established by the medical evidence." S.S.R. 85-28. The question  
20 on review is whether the ALJ had substantial evidence to find that  
21 the medial evidence clearly established that the claimant did not  
22 have a medically severe impairment or combination of impairments.  
23 *Webb*, 433 F.3d at 687; see also *Yuckert*, 841 F.2d at 306.

#### 24 **B. Credibility**

25 Plaintiff alleges the ALJ erred when he assessed her  
26 credibility (Ct. Rec. 14 at 15-18). To aid in weighing the  
27 conflicting evidence, the ALJ evaluated plaintiff's credibility  
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1 and found her less than fully credible (Tr. 15). Credibility  
2 determinations bear on evaluations of medical evidence when an ALJ  
3 is presented with conflicting medical opinions or inconsistency  
4 between a claimant's subjective complaints and diagnosed  
5 condition. *Webb v. Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

6 It is the province of the ALJ to make credibility  
7 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
8 1995). However, the ALJ's findings must be supported by specific  
9 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
10 1990). Once the claimant produces medical evidence of an  
11 underlying medical impairment, the ALJ may not discredit testimony  
12 as to the severity of an impairment because it is unsupported by  
13 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
14 1998). Absent affirmative evidence of malingering, the ALJ's  
15 reasons for rejecting the claimant's testimony must be "clear and  
16 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).

17 "General findings are insufficient: rather the ALJ must  
18 identify what testimony is not credible and what evidence  
19 undermines the claimant's complaints." *Lester*, 81 F.3d at 834;  
20 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

21 The ALJ relied on several factors when he assessed  
22 credibility including plaintiff's lack of mental health treatment,  
23 invalid test score, lack of participation and cooperation, and  
24 inconsistent statements (Tr. 15-18).

25 The ALJ notes plaintiff failed to obtain mental health  
26 treatment or medication for allegedly disabling symptoms from July  
27 2003 until November 17, 2006 (Tr. 15). She attended only a few  
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1 sessions. Then, in December 2006 plaintiff failed to show for her  
2 mental health appointment and, as the ALJ notes, there are no  
3 further treatment notes (Tr. 15, Exhibit 3F/5-6).

4 The ALJ properly relied on plaintiff's unexplained failure to  
5 obtain mental health treatment, including medication, for  
6 allegedly severe mental limitations (Tr. 15, 160-162). Although  
7 plaintiff testified she was not currently receiving mental health  
8 counseling because she is not receiving state disability benefits,  
9 she fails to explain her prior lack of treatment, including  
10 failing to keep at least six scheduled appointments, and failure  
11 to follow up as directed (Tr. 160-161, 170). Noncompliance with  
12 medical care or unexplained or inadequately explained reasons for  
13 failing to seek medical treatment cast doubt on a claimant's  
14 subjective complaints. *Burch v. Barnhart*, 400 F.3d 676 (9<sup>th</sup> Cir.  
15 2005); *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989).

16 Plaintiff's MMPI-2 score in April 2006 was invalid, as the  
17 ALJ observes (Tr. 16, 177). She failed to attend a consultative  
18 examination,<sup>1</sup> and did not return daily activity forms, a lack of  
19 participation the ALJ opines "gives rise to the concern that she  
20 herself feels her symptoms are not significant" (Tr 18, Exhibit  
21 1F/1-14). The ALJ relied on plaintiff's inconsistent statements  
22 when he weighed credibility (Tr. 17). Prozac is described as  
23 giving no benefit (Tr. 161) and as improving mood and energy (Tr.  
24 166, 172, 175, 182). She inconsistently reports her date of  
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26 <sup>1</sup>Ms. Johnson failed to attend the scheduled evaluation on  
27 May 31, 2006. A person who answered plaintiff's phone indicated  
28 she was fishing (Tr. 33). Since she failed to cooperate, the  
agency was unable to establish a period of disability (Tr. 30).  
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1 sobriety. (Tr. 17, Exhibits 3F/1, 3F/4, 4F/23). The ALJ's reasons  
2 are clear convincing, and fully supported by the record. A  
3 claimant's inconsistent statements diminish credibility. It is a  
4 factor the ALJ may properly consider. *Thomas v. Barnhart*, 278 F.3d  
5 947, 958-959 (9<sup>th</sup> Cir. 2002). A lack of effort or participation  
6 diminishes credibility. *Thomas*, 278 F.3d at 959 (lack of  
7 cooperative effort during physical evaluations is a reason to  
8 reject claimant's testimony).

9 The ALJ's credibility assessment is supported by specific,  
10 clear and convincing reasons which are in turn supported by  
11 substantial evidence. See *Smolen v. Chater*, 80 F.3d 1273, 1281  
12 (9<sup>th</sup> Cir. 1996).

### 13 **C. Treating and examining opinions**

14 Plaintiff alleges the ALJ failed to properly weigh the  
15 opinions of treating physician Peter Harveson, M.D., and examining  
16 psychologist Jody Veltkamp, M.D., and of the lay witness mental  
17 health examiners (Ct. Rec. 14 at 13-15).

18 In social security proceedings, the claimant must prove the  
19 existence of a physical or mental impairment by providing medical  
20 evidence consisting of signs, symptoms, and laboratory findings;  
21 the claimant's own statement of symptoms alone will not suffice.  
22 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
23 on the basis of a medically determinable impairment which can be  
24 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
25 medical evidence of an underlying impairment has been shown,  
26 medical findings are not required to support the alleged severity  
27 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cr.  
28 1991).

1 A treating physician's opinion is given special weight  
2 because of familiarity with the claimant and the claimant's  
3 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir.  
4 1989). However, the treating physician's opinion is not  
5 "necessarily conclusive as to either a physical condition or the  
6 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
7 751 (9<sup>th</sup> Cir. 1989)(citations omitted). More weight is given to a  
8 treating physician than an examining physician. *Lester v. Cater*,  
9 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996). Correspondingly, more weight is  
10 given to the opinions of treating and examining physicians than to  
11 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592  
12 (9<sup>th</sup> Cir. 2004). If the treating or examining physician's opinions  
13 are not contradicted, they can be rejected only with clear and  
14 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the  
15 ALJ may reject an opinion if he states specific, legitimate  
16 reasons that are supported by substantial evidence. See *Flaten v.*  
17 *Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463 (9<sup>th</sup> Cir.  
18 1995).

19 In addition to the testimony of a nonexamining medical  
20 advisor, the ALJ must have other evidence to support a decision to  
21 reject the opinion of a treating physician, such as laboratory  
22 test results, contrary reports from examining physicians, and  
23 testimony from the claimant that was inconsistent with the  
24 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
25 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
26 Cir. 1995).

27 *Opinion of a treating doctor*

28 The ALJ notes on July 15, 2003 (more than two years before  
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1 onset) at an appointment with Dr. Harveson, plaintiff

2 stated that after the birth of her first child she  
3 had become increasingly irritable, angry and tired.  
4 She alleged uncontrolled mood swings and an increased  
5 appetite. She said she generally did not trust people.  
6 At that time, she denied homicidal and suicidal  
7 ideations (Exhibit 1F/18). There were no further  
8 treatment notes until November 17, 2006, when she  
9 complained of depressive symptoms. She admitted it  
10 has been awhile since she had been on medication  
11 for depressive symptoms.

12 (Tr. 15; 123).

13 Plaintiff alleges the ALJ should have given great deference  
14 to Dr. Harveson noting Ms. Johnson was experiencing symptoms of  
15 severe depression (Ct. Rec. 14 at 13). The fact that plaintiff  
16 then failed to seek treatment for more than three years, and her  
17 lack of credibility, were properly relied on by the ALJ when he  
18 found she does not suffer from a severe mental impairment. An ALJ  
19 is not required to credit opinions based on a claimant's  
20 unreliable self report. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216  
21 (9<sup>th</sup> Cir. 2005).

22 *Examining psychologist's opinion*

23 In April 2006 Jody Veltkamp, Psy.D., evaluated plaintiff (Tr.  
24 174-179). Ms. Johnson alleged she suffered ADHD as a child and  
25 took medication from sixth through eighth grade. Dr. Veltkamp  
26 diagnosed major depressive disorder, moderate, without psychotic  
27 features, and amphetamine abuse in early sustained remission (Tr.  
28 179). She assessed a current GAF of 63 indicating plaintiff  
suffered only mild symptoms or some social or occupational  
functioning difficulties, but generally functioned pretty well,  
with some meaningful interpersonal relationships (Tr. 179). Dr.  
Veltkamp recommended plaintiff obtain a neuropsychological

1 evaluation following treatment for depression to determine the  
2 "possible presence of a formalized attention deficit hyperactivity  
3 disorder" (Tr. 178-179). Dr. Veltkamp's own testing revealed  
4 plaintiff's "inattentiveness and inconsistency did not rise to the  
5 level of a clinically significant syndrome," as the ALJ points out  
6 (Tr. Tr. 16, 176). Dr. Veltkamp recommended a psychiatric  
7 evaluation based on plaintiff's clinical depressive symptomology  
8 (Tr. 179). The ALJ observes this is based at least in part on the  
9 Beck Depression Inventory, a self report of symptoms. As the ALJ  
10 notes, Dr. Veltkamp recommended plaintiff move forward with her  
11 goal of earning a GED, apparently finding no severe cognitive  
12 limitations (Tr. 17, Exhibit 4F/7).

13       The ALJ appears to have accepted Dr. Veltkamp's GAF  
14 indicative of mild symptoms since he found plaintiff suffers from  
15 the medially determinable impairment of depression, but it is not  
16 severe. The ALJ considered plaintiff's credibility when he  
17 assessed the evaluation. Plaintiff alleges the ALJ should have  
18 given great deference to Dr. Veltkamp noting plaintiff "was  
19 experiencing symptoms of severe depression," but the ALJ's  
20 interpretation is supported by the evidence, since mild symptoms  
21 were assessed. The ALJ is responsible for resolving conflicts and  
22 ambiguity in medical evidence. *See Lewis v. Apfel*, 236 F.3d 503,  
23 509 (9<sup>th</sup> Cir. 2001). He has done so. The Court may not substitute  
24 its judgment for the ALJ's resolution of the conflicting evidence.  
25 *See Reddick v. Chater*, 157 F.3d 715, 720-721 (9<sup>th</sup> Cir. 1998).

26       The record fully supports the weight the ALJ gave the  
27 conflicting and scant medical evidence.

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1 *Opinions of lay witnesses*

2 In determining disability an ALJ must consider lay witness  
3 testimony concerning a claimant's ability to work. *Bruce v.*  
4 *Astrue*, 557 F.3d 1113, 1115 (9<sup>th</sup> Cir. 2009). If an ALJ disregards  
5 lay witness testimony he must provide reasons "that are germane to  
6 each witness." *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9<sup>th</sup> Cir.  
7 1996). The ALJ's reasons must be specific. *Stout v. Comm'r*, 454  
8 F.3d 1050, 1054 (9<sup>th</sup> Cir. 2006).

9 The ALJ notes the opinions rendered in May 2006, December  
10 2006, and August 2008 for public assistance purposes are based  
11 solely on plaintiff's self reports of not getting along with  
12 others<sup>2</sup> and of memory and concentration problems. There is "no  
13 evidence of any clinical tests upon which the cognitive  
14 limitations were based" (Tr. 19, Exhibits 4F/8-11 and 4F/20-23;  
15 Tr. 180-182 (3/29/06); Tr. 172 (11/28/06); Tr. 161 (12/11/06); Tr.  
16 186-191 (late 2006); and Tr. 192-195 (8/08)). An ALJ is not  
17 required to credit opinions based on a claimant's unreliable self-  
18 report. *Bayliss*, 427 F.3d at 1216. This alone is a specific reason  
19 germane to each witness.

20 It is the role of the trier of fact, not this Court, to  
21 resolve conflicts in evidence. *Richardson v. Perales*, 402 U.S.  
22 389, 400 (1971).

23 **CONCLUSION**

24 Having reviewed the record and the ALJ's conclusions, this  
25 Court finds the ALJ's decision is free of legal error and  
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27 <sup>2</sup>Interestingly, plaintiff reported in 2003 she "has [had] a  
28 best friend for eight years and relies on her for most anything"  
(Tr. 123).

1 supported by substantial evidence.

2 Accordingly,

3 **IT IS ORDERED:**

4 1. Defendant's motion for summary judgment (**Ct. Rec. 19**) is  
5 **GRANTED.**

6 2. Plaintiff's motion for summary judgment (**Ct. Rec. 13**) is  
7 **DENIED.**

8 The District Court Executive is directed to file this Order,  
9 provide copies to counsel for plaintiff and defendant, enter  
10 judgment in favor of defendant, and **CLOSE** this file.

11 DATED this 16th day of September, 2010.

12  
13 s/ James P. Hutton

14 JAMES P. HUTTON  
15 UNITED STATES MAGISTRATE JUDGE  
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